IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 216 OF 2006

Damodar Pednekar,
S/o Laximan Pednekar,
R/o. House No. 341/5, Sodiem,
Siolim,
Bardez-Goa. ..... Appellant
(Original Complainant)

V e r s u s

1. Umakant Naik,
S/o. Laxman Naik,
House No.45,
Gauri Maula,
Curca-Goa. ..... (Original Accused)

2. State of Goa
Through the Public Prosecutor ..... Respondents

Mrs. Asha Dessai, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent no.2.

CORAM:- N. A. BRITTO, J.

DATE:- 15th June, 2006.

ORAL JUDGMENT

Heard Mrs. Asha Dessai, the learned Counsel on behalf of the applicant, who has styled himself as original Complainant, and the learned Public Prosecutor Ms. Coutinho, on behalf of respondent no.2.

2. The applicant herein was a driver of a fire tender and the accused, (respondent no.1 herein), was the driver of a motorcycle. An accident took place between the said two vehicles, as a result of which, the applicant informed the police and the police after investigation, filed a case against the said accused being C.C. No.201/2002/A under Section/s 279, 337 and 338 of I.P.C. and Section 128 of the Motor Vehicle Act, 1988. The accused came to be acquitted by an Order dated 28.02.2006 of the learned J.M.F.C., Panaji. The State Government has chosen not to file an appeal against the said acquittal of the accused. The applicant, styling himself to be the original Complainant, has filed the present application for Leave to Appeal under Section 378 of the Code of Criminal Procedure, 1973.

3. The short question before the Court is whether a first informant, who is not a Complainant, as understood under the Code of

Criminal Procedure 1973, can file an application for Leave to Appeal? To contend that he can file, on behalf of the applicant, reliance is placed on a decision of the Division Bench of Punjab and Haryana High Court in the case of ***Sukhdev Singh Rana v. State of Haryana (1996 CRI. L. J. 3060)***. In that case, the learned Division Bench observed that the word 'complainant' used in Section 378 (4) of the Code, could not be given such a restricted meaning and could not be construed so as to exclude the victim or the sufferer and who had first-hand information of the incident in question. The Division Bench observed that the concept of locus standi in relation to the criminal jurisprudence had to be given a wider meaning. The scheme of the Code was such so as to include a successor and even any person who might not be the actual Complainant before the Court but had suffered during that incident and was a victim of the assailants. The investigating agency could be put into motion even by a stranger to the occurrence. From the settled principles of law it is clear that it is the right to continue the cause which would form the basis for permitting a person other than the actual complainant who might die in the course of the proceedings to continue the subsequent proceedings. Reference was made to a decision of the Apex Court in the case of ***A. R. Antulay v. Ramdas Sriniwas Nayak, (AIR 1984 S.C. 718)***, wherein the Apex Court had observed thus :-

"But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the Cr.P.C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contraindicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force (see Section 2(n), Cr.P.C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statues, who brings an act or omission made punishable by law to the notice of

> the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it in to a straight jacket formula of locus-standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the Court would require an unambiguous statutory provision and a tangled web of argument for drawing a far-fetched implication, cannot be a substitute for an express statutory provision. In the matter of initiation of proceeding before a Special Judge under Section 8(1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not."

However, that was a case where there was a complaint filed as well as a State case filed and both the cases were amalgamated under the relevant

provisions of the Code and the Appeal against acquittal under Section 378 (4) of the Code was filed by one of the legal representatives of the Complainant. At the same time, the Division Bench observed that the said legal representative could not be held that she had no right to file the Revision and/or Appeal before that Court in the facts and circumstances of the said case. In other words, the learned Division Bench granted leave to appeal to the said legal representative in place of the deceased Complainant at whose instance a complaint case was also filed and the State had investigated another case and filed the same. This decision has no application to the facts of this case.

4. Section 378 of the Code expressly deals with appeals against acquittal and sub-section (1) provides for filing of appeals by the Public Prosecutor at the instance of District Magistrate and State Government and indicates that they can be filed only as provided under Sub-section (2) and subject to the provisions of sub-section (3) and sub-section (5). Sub-section (2) deals with filing of appeal in cases of acquittal which were investigated by Delhi Special Police Establishment or other agencies empowered to investigate under any Central Act.. Sub-section (3) provides that no appeal to the High Court under sub-section (1) or sub-section (2) shall be

entertained except with the leave of the High Court, and sub-section (5) provides for the limitation period for filing an application under sub-section (4) of Section 378. Sub-section (4) of Section 378 deals with grant of special leave to appeal against the order of acquittal passed in cases instituted upon a complaint and the High Court, on an application made to it by the complainant in that behalf, grants special leave to appeal.

5. Although the applicant herein has styled himself as the original Complainant, the applicant was only the first informant at whose information, the case against the accused came to be registered and investigated and a charge sheet filed and which has ended in acquittal. The applicant could not be termed to be a Complainant as stated in sub-section (4) of Section 378 of the Act, for he had not filed any complaint, as understood or defined under the Code before the learned J.M.F.C. It is to be noted that only a person who files a complaint and who was treated as a Complainant before the Trial Court, can be treated to be a Complainant as stated in sub-section (4) of Section 378 of the Code. In order to have the characteristics of a complaint, there are four things which are required to be noted. Firstly, there must be allegations made oral or in writing, secondly, the allegations must be made to a Magistrate, thirdly, they must be made

with a view of the Magistrate taking action, and lastly, it must not be a police report. In other words, the applicant herein did not qualify himself to be a Complainant and was not there as a Complainant before the J.M.F.C. in the case in which the accused came to be acquitted.

6. An appeal is a statutory right. It is a creature of statute. Section 372 of the Code itself provides that no appeal is to lie unless otherwise provided, and when Section 378 of the Code provides that appeals are to be filed, only as provided for, they have to be filed as provided for and no other manner. Since the applicant was not the Complainant, he cannot file an appeal as provided for by sub-section (4) of Section 378 of the Code.

7. This controversy is no longer res integra. In the case of ***K. Chinnaswamy Reddy v. State of Andhra Pradesh & anr. (AIR 1962 S.C. 1788)*** followed in ***Akalu Ahir & Ors. v. Ramdeo Ram (AIR 1973 S.C. 2145)***, the Apex Court observed that the object of limiting the right of appeal against the orders of acquittal to the State Government was to ensure that such appeals are filed only when there has been miscarriage of justice and not when inspired by vindictiveness. A private party had,

therefore, no right of appeal. The aggrieved party could however move the authorities concerned to consider the question of presenting an appeal against acquittal. This indicates that punishment for offences is normally the responsibility of the State as the guardian of law and order. The Apex Court in the case of ***Jagbir & anr. v. State of Punjab ((1998) 6 S.C.C. 629),*** has again stated that :

> "The cognizance in the instant case was taken upon a police report under Section 190(1)(b) Cr.P.C. Resultantly it was the State alone who could file an appeal in the High Court against the order of acquittal under Section 378(1) Cr.P.C. after obtaining leave under sub-section (3) thereof and not the complainant who could only file an application under Section 401 Cr.P.C. for revision of that order. The High Court, therefore, was not at all justified in entertaining the appeal of the complainant and disposing the same in the manner aforesaid."

As already stated, the applicant herein was only the first informant who had set the law in motion by giving the information to the police of the occurrence of the accident. The applicant never approached the Court of

Judicial Magistrate with his complaint with an allegation that it is the accused who was responsible for the said accident. By no stretch of imagination, the applicant could be called to be a Complainant, as that expression is understood under the Code. He was only a first informant. If at all special leave is provided for under sub-section (4) of Section 378, it is for a Complainant. The applicant, considering the facts of this case, does not fit in that character, therefore, the present application for leave to appeal is not maintainable at his instance.

8. Learned Advocate Mrs. Dessai, on behalf of the applicant, submits that the application be converted into a revision application. I am not inclined to grant such a prayer. In case the applicant/first informant is entitled to file a revision petition against the said order of acquittal, applicant is at liberty to file the same. With the above observations, the application is dismissed.

Authenticated copy on payment of necessary charges be issued to the parties.

N. A. BRITTO,J.

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